

# Elementary and Secondary Education Act Reauthorization Recommendations



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## Overview

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This document provides California State Superintendent of Public Instruction Jack O'Connell's recommendations for the reauthorization of the Elementary and Secondary Education Act (ESEA). These recommendations identify priorities and specify where changes should be made in existing law. It also states opposition to private school vouchers and a federal definition of teacher effectiveness.

This document is a part of the ongoing working relationship with Members of Congress throughout the reauthorization and beyond. We invite you to contact us to further discuss these matters and we look forward to continuing our good work together.

## Amend ESEA to allow states to use a growth or improvement model

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**Issue:** ESEA uses a “status model” to measure the academic performance of subgroups. The model measures student performance against predetermined annual grade level objectives that must be the same for all schools and local educational agencies (LEAs) in the state. The objective identifies a single minimum percentage of students who are required to meet or exceed the proficient level for mathematics and for reading/language arts. The law's status model, however, does not allow for measures of student academic improvement or growth over time, which is also a reliable and appropriate way to determine academic progress and avoid over-identifying schools for improvement. The reauthorized law should allow states to use a proven growth or improvement model like California's Academic Performance Index (API) for measuring adequate yearly progress (AYP).

**Proposals:** Amend section 1111(b)(2)(C) to give state educational agencies (SEAs) the option of using any one of a number of valid growth or improvement models, the law's current status model, or a combination of both. The new legislative language reflecting the option should be used throughout section 1111, including references to the growth or improvement model in section 1111(h)(1)(C), which addresses the required information on annual state reports.

Provide new funding for a state longitudinal data reporting system that can support the proposed growth or improvement models.

Amend the safe harbor provision of 1111(b)(2)(I) to allow a school to make AYP if the percentage of students in the subgroup who did not meet or exceed the proficient level of academic achievement decreased by 5 percent (rather than the existing statutory requirement of 10 percent).

## **Provide an investment in ESEA that is commensurate to its expectations**

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**Issue:** The promise to adequately fund ESEA remains unfulfilled. The existing shortfall has undercut the efforts of states, districts and schools at a time when they are working to meet new and rigorous requirements for students and teachers. The reauthorized law should provide an investment commensurate to the law's expectations.

**Proposals:** Congress should fully fund the law up to its authorizing levels. Make the investment commensurate to ESEA's expectations a priority throughout the federal appropriations cycle.

Amend section 1111(b)(3)(D) to require significantly higher federal funding levels for the state academic assessment system in order to prevent suspension of the administration of assessments. This guaranteed minimum funding provision should be broadened to permit deferral of any assessments that are mandated under ESEA, not just those newly required under ESEA, as the current law is written. In FY 2005, Congress appropriated this state assessment program \$411,680,000, FY 2006 and FY 2007 were funded at \$407,563,000, and the President has requested \$411,630,000 for FY 2008. The newly reauthorized language should reflect higher appropriate amounts for future years.

## **Amend ESEA to provide support and assistance for schools and districts in most need of improvement, including additional financial support and technical assistance**

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**Issue:** The law's current school improvement, corrective action and restructuring requirements are too constraining. ESEA's interventions require that all schools in need of improvement, corrective action or restructuring receive similar attention, no matter what their discrete issues may be. The law does not allow the LEA or the SEA to design and implement interventions based on the nature and extent of the cause for school identification under adequate yearly progress (AYP). Moreover, the law's current timelines do not allow sufficient time for the interventions to improve academic performance. The reauthorized law should allow the SEAs and the LEAs the discretion to design and implement interventions based on the nature and extent of the cause for school identification. The new law should also allow SEAs and LEAs to provide support and assistance to those schools and districts in most need of improvement, rather than diluting the SEA or LEA's impact by requiring similar attention to all identified schools. Finally, the reauthorization should allow successful interventions time to effect change, even if those interventions require more than one year to show full results.

**Proposals:** Add a new paragraph to section 1116(b) to permit SEAs and LEAs discretion, notwithstanding any other school improvement requirements of section 1116, to design and implement a targeted intervention in a school identified for improvement, corrective action, or restructuring, based on the nature and extent of the cause for school identification under AYP. Grant SEAs and LEAs the authority to target the

subgroup(s) that did not make AYP. Include language in this section that grants the SEA discretion to focus its technical assistance and interventions on those identified schools and districts that are most in need of additional assistance. Similar discretion should be given to LEAs in the provision of technical assistance and intervention to schools most in need of additional assistance.

Amend section 1116(b)(7)(D) to allow the SEA to delay the law's corrective action and restructuring timelines if a school or district that does not make AYP can provide evidence that the plan being implemented is remedying the causes for identification, but will require additional time to fully work.

### **Amend ESEA to extend existing flexibility for meeting the highly qualified teacher requirements, including teachers of multiple subjects, special education and rural educators**

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**Issue:** The implementation of ESEA's teacher quality provisions has been challenging. The U.S. Department of Education (ED) has acknowledged the law's limitations by providing flexibility in the requirements and timelines. In particular, the ED granted flexibility for special education teachers, rural teachers and multiple subject teachers. The reauthorized law should codify and expand this common sense flexibility.

**Proposals:** Amend section 9109 (23)(B)(ii) to allow middle or secondary school teachers who are new to the profession, highly qualified in one subject and teach multiple subjects additional time, as determined appropriate by the SEA, to demonstrate subject matter mastery for all subjects taught using the High Objective Uniform State Standard of Evaluation (HOUSSE).

Amend 9109 (23)(C) to allow new special education and new rural teachers to use the HOUSSE to become highly qualified.

### **Amend ESEA to allow states to retain former limited English proficient (LEP) students in the LEP subgroup for purposes of AYP determinations and to include those students in calculations of LEP subgroups**

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**Issue:** Currently, ESEA regulations allow states to include "former LEP" students within the LEP subgroup in making AYP determinations for up to two AYP determination cycles after they no longer meet the State's definition for limited English proficiency

The current two year "residual inclusion," however, has two notable problems. First, it creates an incentive to retain students in the LEP classification even after they have achieved a modest level of English proficiency in order for the LEP subgroup to take credit for these successful students' scores as long as possible (as opposed to only for two AYP determination cycles after they no longer meet the State's definition for limited English proficiency). Second, it does not provide a comprehensive picture of the progress of the universe of students who at one point were identified as limited English

proficient. By having the LEP subgroup reflect only the progress of current LEP students and students who obtained proficiency within the last two AYP determination cycles, it does not capture the complete accountability picture of how successful the school or district is in moving LEP students toward proficiency.

**Proposal:** Amend ESEA section 1111(b)(3)(C) to allow states to include in the LEP subgroup the scores of all students who were at one point identified as limited English proficient, regardless of when the students met the State's definition for English proficiency. Within this newly defined LEP subgroup, states would be required to disaggregate the performance of current LEP students and former LEP students for reporting purposes only (not for AYP determinations). This proposal would eliminate the problems identified above while capturing a complete picture of the LEA's progress in serving LEP students and strengthening the LEA's responsibility to provide current LEP students with appropriate instruction to enhance their English language proficiency.

This proposal works in conjunction with the next proposal, to include former LEP students in the student count that determines if the number of LEP students is sufficient to yield statistically reliable information.

**Issue:** Currently, states that take advantage of "residual inclusion" are not required to count former LEP students in the LEP subgroup for the purpose of determining whether a school or LEA has sufficient number of LEP students to yield statistically reliable information. This practice of excluding former LEP students from the "N" count means that the LEP subgroup in many schools and districts falls below the minimum "N" number for accountability purposes. As a result, these schools and districts are not held accountable for the performance of the LEP subgroup.

**Proposal:** Amend ESEA 1111(b)(2)(C) to require states to include former LEP students in the student count that determines if the number of limited English proficient students is sufficient to yield statistically reliable information. This will enhance accountability by increasing the number of LEAs and schools that would be accountable for the performance of the newly defined LEP subgroup (including both current and former LEP students). This proposal works in conjunction with the previous proposal to include in the LEP subgroup the scores of all students who were at one point identified as limited English proficient, regardless of when the students met the State's definition for English proficiency.

## **Amend ESEA to allow students with disabilities who regularly use modifications to be included in the required 95 percent participation rate**

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**Issue:** ESEA does not allow the inclusion of students who use certain modifications on statewide testing to count in the 95 percent participation rate requirement that is part of the adequate yearly progress (AYP) component of ESEA. This exclusion from the 95 percent participation rate applies even if the modifications are a part their individualized education program (IEP) or 504 plan.

Not allowing these students to count toward the participation rate runs contrary to the underlying purposes of IDEA and the Rehabilitation Act, which require individualized determinations of the manner in which disabled students access statewide assessments. By not counting these students as participants, the law unfairly penalizes the school and school district for meeting these important obligations and it does not recognize the student's contribution to the school and district.

**Proposal:** Amend ESEA section 1111(b)(2)(I) and 1111(b)(3)(C) to provide that students who regularly use modifications in daily classroom instruction and on assessments, as documented in their individualized education program or 504 plan, shall be counted toward the 95 percent participation rate as required by ESEA.

## **Amend ESEA to respect parental rights to exempt their children from state testing**

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**Issue:** In California, parents have the right under state law to exempt their children from participating in the statewide assessment system. Under ESEA, schools will fail to make the AYP requirement of having 95 percent of students tested if too many parents have exercised their right to exempt their children from testing, regardless of student achievement. The reauthorized law should recognize the state's parental opt-out law.

**Proposal:** Amend section 1111(b)(2)(I)(ii) to clarify that, when calculating whether 95 percent of students participated in assessments, the state, district and school will not be penalized if parents refuse to permit their children to participate in the state assessment, in accordance with state law.

## **Amend ESEA to give discretion in the sequence of and provision of choice and SES**

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**Issue:** The law's current sequence of requiring school choice in the first year of school improvement and supplemental educational services (SES) in the second year of school improvement does not provide districts the flexibility to deliver choice and SES in an educationally sound manner. The current law does not provide the school the benefit of SES services before the student may choose to leave the school using the school choice provision; nor does it generally allow schools to target these programs to subgroups based on the nature and extent of the cause for identification. States should have the discretion to permit certain LEAs to reverse the order of choice and SES, and to target those interventions toward the subgroups or individual students who are not yet testing proficient. The reauthorized law should give discretion in the sequence and provision of choice and SES.

**Proposal:** Add new language to section 1116 that, notwithstanding the school improvement, corrective action and restructuring requirements of the section, grants the SEA the discretion to permit LEAs to adjust the order of choice and supplemental educational services; and to allow LEAs to target those interventions toward the subgroups or individual students who are not yet testing proficient, according to the nature and extent of a school's failure to make AYP.

## **Provide a separate funding stream for the implementation of choice and supplemental educational services**

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**Issue:** ESEA's choice and SES provisions require LEAs to dedicate funding in an inefficient manner. LEAs have to set aside an amount equal to 20 percent of their Title I grants for choice and SES at the expense of investing in immediate Title I improvement activities. The reauthorized law should provide a new dedicated funding stream for the administration and implementation of choice and supplemental educational services.

**Proposal:** Under section 1003, create a new subsection that would authorize new funding for both SEAs and LEAs to implement and administer school choice and supplemental educational services provisions.

## **Amend ESEA to require SES providers to serve eligible English learners and students with disabilities**

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**Issue:** The law's SES program does not always extend to the most challenging academic services delivered to students with disabilities and English language learners. These services should be required of SES providers in order to develop such important SES resources in the coming years. The reauthorized law should require SES providers to serve English learners and students with disabilities.

**Proposal:** Amend section 1116(e)(5) to require participating providers of SES to provide services to eligible students with disabilities and English learners if such students enroll in their program.

## **Amend ESEA to advance teacher quality at the highest poverty schools by providing real incentives to attract and retain quality teachers and improve teaching and learning conditions**

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**Issue:** Teacher quality is one of the most important factors in student success. The reauthorized law should create the incentives to improve the quality and distribution of excellent teachers.

**Proposal:** Create a new Title II Part C Subpart to create a teacher recruitment and innovation grant designed to provide SEAs financial incentives for comprehensive approaches in high-need schools that include innovative teacher preparation and recruitment, better working conditions, professional time for planning and collaboration and instructional career ladders.

## **Reject a federal definition of teacher effectiveness**

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**Issue:** Multiple reauthorization proposals attempt to impose a federal definition of teacher effectiveness. While California believes teacher effectiveness is critical, we do not believe that a one size fits all definition for the entire country will result in actually improving teacher effectiveness.

**Statement:** Reject a federal definition of teacher effectiveness.

## **Reject private school vouchers**

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**Issue:** The Administration's ESEA proposal, *Building on Results: A Blueprint for Strengthening the No Child Left Behind Act*, would enhance choice through private vouchers by proposing "Promise Scholarships" and "Opportunity Scholarships."

**Statement:** Reject private school vouchers that shift critical resources away from public schools.

## **For more information**

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